

[Waiver 1994-5]

**MEMORANDUM**

September 13, 1994

TO: Beth Molesworth, Staff  
Montgomery County Commission on Child Care  
Department of Family Resources

FROM: Heidi Strassler, Vice Chairman [signed]  
Montgomery County Ethics Commission

RE: Request for Advisory Opinion and Waiver for Appointment to  
Commission on Child Care

The Ethics Commission has received and reviewed your request for advice and a waiver, if necessary, on behalf of a candidate for appointment to the Montgomery County Commission on Child Care (MCCCC). In support to this request, the following information was provided.

The applicant is the Executive Director of a non-profit agency which currently holds a contract with Montgomery County to provide information regarding child care resources and to make referrals. The funding for the contract occasionally is a matter of discussion by the MCCCC.

Pursuant to §27-62 of the Montgomery County Code 1994, the MCCCC was created to consist of 18 voting members appointed by the County Executive and confirmed by the County Council. The Code further requires that 7 of the members be providers of child care services (industry representatives); 5 should be parents of children receiving child care services; 5 should be selected from the business community and the general public; and 1 should represent the Montgomery County Chapter of the Municipal League.

The definition of public employee includes a member of a board, commission, committee, task force, or similar body, whether or not the person is compensated for their service or the body is permanent or temporary. §19A-4(m)(3) of the Montgomery County Code. Moreover, a public employee must not participate in a matter that affects a business in which the public employee has an economic interest, nor in a matter that involves a business in which the public employee is an officer, director, or employee. §§19A-11(a)(1) and (2)(A) of the Montgomery County Code.

In a previous advisory opinion and waiver, the Ethics Commission determined that a waiver was appropriate based upon the nature of the MCCCC as an advocacy body

with the primary duty of making recommendations to the County government to improve services in support of child care. The Commission further found that the participation of a member of the MCCCC in a matter in which the member has a fiduciary or economic interest created a minimal conflict of interest and that there was no indication that the grant of a waiver would provide a member of the MCCCC with an unfair advantage over other members of the public. As a result, the requirements of §19A-8 of the Montgomery County Code had been met. A copy of the previous opinion and waiver is enclosed for your review.

The Ethics Commission considers the activities of the proposed member of the MCCCC, as described in your request, to be consistent with the analysis conducted for the entire Commission and, therefore, grants the requested waiver, subject to the following conditions:

1. Before participating in a matter which may directly benefit a business in which the member has an economic or fiduciary interest, the member must disclose the interest publicly in each meeting of MCCCC which considers the matter. This disclosure should be reflected in the minutes of MCCCC.
2. The member's participation under this waiver must be limited to discussion only; the member must not vote on the matter.

If you have any questions regarding this decision, please do not hesitate to contact the Ethics Commission.

2784.HS:KLFH  
94.04172

Enclosure

cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission